DONALD EPPERSON

IBLA 83-162 Decided September 6, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 47497.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Applications: 640-acre Limitation -- Oil and Gas Leases: Lands Subject to

   Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

APPEARANCES: Donald Epperson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Donald Epperson appeals the decision of October 28, 1982, in which the Montana State Office, Bureau of Land Management (BLM), rejected his noncompetitive over-the-counter oil and gas lease offer M 47497. The reason given was that the offer was for a total of less than 640 acres of available land and was not within the exceptions contained in 43 CFR 3110.1-3(a). The regulation 43 CFR 3110.1-3(a), Acreage limitation, provides in pertinent part: "No offer may be made for less than 640 acres except where * * * the land is surrounded by lands not available for leasing under the Act."

The offer, as originally filed by Epperson on June 23, 1980, requested all of secs. 22, 27, 28, and 34, T. 28 N., R. 13 W., Principal meridian. The lands sought were listed as being 2,560 acres situated in Flathead County, Montana.

On September 27, 1982, Epperson filed with BLM a signed "Lease Relinquishment" whereby he surrendered and relinquished "my oil and gas lease, Serial No. M-47497" as to all of secs. 27, 28, and 34 and the SW 1/4 SW 1/4 of sec. 22, T. 28 N., R. 13 W. Six hundred acres were listed as remaining after the relinquishment.

The BLM decision of October 28, 1982, further provided that

> [a]fter withdrawal of part of your offer, only 600.00 acres remain in a protracted section. All offers to lease must include only entire sections (See 43 CFR 3101.1-[4](d) copy enclosed), where available. Where all the section is not available the offer must describe all the lands that are available. T. 28 N., R. 13 W., P.M.M. Sec. 22: E 1/2, E 1/2 W 1/2, W 1/2 NW 1/4, NW 1/4 SW 1/4 600.00 acres, Flathead County, Montana.

In his statement of reasons for appeal, Epperson cites 43 CFR 3101.1-4(d) 1/ and contends that his offer should not have been rejected because only 600 acres are available for leasing in section 22, since the other 40 acres in that section, the SW 1/4 SW 1/4, are in the Great Bear Wilderness Area. 2/ The filing fee and rental for all of the lands originally sought to be leased were included with the lease offer, M 47497, when it was filed on June 23, 1980. The lands sought for leasing were, at the time the offer was filed, available for leasing.

Attached to the statement of reasons for appeal is a copy of lease M 47498 issued to Epperson for other lands adjacent to a wilderness area. Epperson's original offer for the lease M 47498 had requested all of the lands situated in secs. 16, 17, 20, and 21, T. 28 N., R. 13 W., Flathead

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1/ Both BLM in its decision and Epperson in his statement of reasons refer to 43 CFR 3101.1-5(d) as the regulation which generally states that "[a]ll offers must include only entire sections * * *." The regulation which actually states this is 43 CFR 3101.1-4(d) which provides:

"(d) Protracted surveys. (1) When protracted surveys have been approved and the effective date thereof published in the Federal Register, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

"(2) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. [43 CFR 3101.1-4(a) provides that each offer must describe the lands by legal subdivision, section, township, and range.] If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease."

2/ The Great Bear wilderness area was designated as such on Oct. 28, 1978, by P.L. 95-546, 92 Stat. 2062, 16 U.S.C. § 1132 note (Supp. V 1981). Pursuant to 16 U.S.C. § 1133(d)(3) (Supp. V 1981), such an area was to remain open to mineral leasing until midnight Dec. 31, 1983. However, on June 1, 1981, the Secretary signed Public Land Order No. 5952 which withdrew, inter alia, lands in the Great Bear wilderness area from mineral leasing. 46 FR 30086 (June 5, 1981). That action was taken in response to an emergency withdrawal resolution adopted by the House Interior and Insular Affairs Committee on May 21, 1981.

County, Montana. The lease as issued by BLM on August 1, 1982, described those lands actually included in the lease, i.e., 1,640 acres as opposed to 2,560 acres originally sought for leasing by Epperson. In explanation for the reduction in acreage actually leased as opposed to that sought for leasing, BLM stated that "[t]his lease does not and is not intended to include any lands within a designated wilderness area. The wilderness boundary can be identified by contacting the surface managing agency identified in the lease terms."

In the statement of reasons Epperson states as follows:

> Your attention is also directed to the fact that when M-47498 was issued, the rejected lands followed subdivision lines rather than the true outline of the Wilderness area. Consequently, when the Wilderness land was withdrawn by me in Section 22, I withdrew the SW 1/4 SW 1/4 since that obviously was the way leases were being issued. It has now come to my attention that the BLM has changed their method and now eliminate lands according to the true boundary of the Wilderness area. However, there were no notices given of this change nor did the rejection of M-47497 contain any reference to it being rejected for this reason, but only because of not including the 40 acres in the SW 1/4 SW 1/4.
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> Conclusion: I believe the decision affecting this application should be reversed and the lease issued to the applicant, or failing to grant this relief, that consideration should be given to allowing the applicant to amend the withdrawal to conform to the now BLM policy.

[1] Generally, an oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within the subdivision may not be available for leasing. See 43 CFR 3101.1-4(a), (d); William B. Collister, 71 I.D. 124 (1964). Additional phrases in a description such as "all available" or "less patents" does not make the description improper where the offeror submits full rental for the section or subdivision. Milan S. Papulak, 30 IBLA 77 (1977); William B. Collister, supra; see James M. Chudnow, 62 IBLA 19 (1982). If an offeror does not wish to submit rental for an entire section or subdivision which contains lands unavailable for leasing, he may specifically identify the land to be excluded by its legal description. See, e.g., James M. Chudnow, 67 IBLA 76 (1982); Leon Jeffcoat, 66 IBLA 80 (1982).

As originally filed, Epperson's offer, M 47497, was proper on its face, and he submitted the appropriate rental for all the lands described. The later "Lease Relinquishment" was merely his attempt to note that subsequent to his offer certain of the lands covered by his offer and located within a wilderness area were withdrawn from the mineral leasing laws. However, the oil and gas plat for T. 28 N., R. 13 E., shows that certain lands in the SW 1/4 SW 1/4 of sec. 22 that were included on his relinquishment are available for leasing. The October 28, 1982, BLM decision, therefore, to the extent it described only 600 acres as being available in sec. 22, was in error. The boundary line of the Great Bear wilderness area passes through the

SW 1/4 SW 1/4 of sec. 22. Thus, it appears from the oil and gas plat that approximately 15 to 20 acres in that quarter-quarter section are available for leasing. By specifically describing the SW 1/4 SW 1/4 as relinquished, appellant excluded available lands from his offer. Because the remaining lands in his offer did not include all the available lands in sec. 22, the offer was properly rejected. See 43 CFR 3101.1-4(d).

If appellant had not filed the relinquishment his offer would have been acceptable as to all those lands available for leasing in sec. 22 and BLM could properly have issued a lease for those lands. See William B. Collister, supra at 124.

Appellant claims that he was misled into withdrawing the entire SW 1/4 SW 1/4, because a prior lease he had received described lands following "subdivision lines rather than the true outline of the wilderness area." He notes that BLM now eliminates lands according to the true boundary of the wilderness area. It is unfortunate that appellant was misled, but clearly the regulations require the description of all available lands. That BLM failed to properly describe the leased lands in M 47498 cannot serve to create any rights in this case not authorized by law. See 43 CFR 1810.3(c).

In this case if appellant had relinquished his offer only to the extent of the lands within the wilderness area, so that the remaining lands in his offer covered all available acreage in sec. 22, BLM could not properly have rejected the offer as violating the 640-acre rule, even though the total available lands in section 22 would have been less than 640 acres. The reason is that at the time Epperson filed his lease offer, all the lands described were available for leasing. The fact that certain of the lands were withdrawn from mineral leasing subsequent to the filing of the offer should not have precluded the issuance of a lease for the acreage available in sec. 22. Thus, where subsequent events have the effect of reducing available acreage below 640 acres, the status of the land, as reflected in the BLM records when the offer was filed, is controlling for purposes of counting acreage to determine compliance with the 640-acre rule. See James M. Chudnow, 67 IBLA 143, 147-49 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Bruce R. Harris
Administrative Judge

We concur:

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Will A. Irwin
Administrative Judge

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Edward W. Stuebing
Administrative Judge